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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10 004,543	12 04 2001	James H. Jannard	OAKLY1172C1	8406

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[REDACTED] EXAMINER

DANG, HUNG XUAN

ART UNIT	PAPER NUMBER
2873	

DATE MAILED: 04 11 2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10 004,543	Applicant(s)	Jannard et al
Examiner	Hung X. Dang	Art Unit	2873



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Dec 4, 2001

2a)  This action is FINAL. 2b)  This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some\* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

15) <input checked="" type="checkbox"/> Notice of References Cited PTO 892	18) Interview Summary PTO 413 Paper No. s
16) Notice of Draftsperson's Patent Drawing Review PTO 948	19) Notice of Informal Patent Application PTO 152
17) Information Disclosure Statement(s) PTO 1449 Paper No. s	20) Other

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**Oath/Declaration**

1. The Oath/Declaration filed on 12/04/01 is acceptable.

**Information Disclosure Statement**

2. If applicant is aware of any relevant prior art, he/she requested to cite it on form **PTO-1449** in accordance with the guidelines set forth in M.P.E.P. 609.

**35 U.S.C. 101, Statutory Basis for Double Patenting**

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Cokert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a

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terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

**Rejection, 35 U.S.C. 101, Double Patenting**

4. Claim 1 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,325,507. This is a double patenting rejection.

5. Any inquiry concerning this communication should be directed to Examiner Hung dang at telephone number (703) 308-0550.

4/02

Hu<sup>n</sup> Dang  
HUNG DANG

PRIMARY EXAMINER

ART UNIT 2873